

Response to Office Action Mailed May 18, 2007
S/N 10/826,799
Marshall Thomas DePue, et al.
Atty Dkt: 10030184-1

REMARKS

Claims 1-27 were pending in the application prior to the current amendment. Claims 1 and 5 have been amended herein. Claims 2-4, 6 and 7 have been canceled. Claims 8-27 remain in the application unchanged. Accordingly, after entry of the amendment, claims 1, 5 and 8-27 will be pending in the application. Re-examination and reconsideration are requested.

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I. Rejection of Claims 1-3 Under 35 U.S.C. §102(e)

Claims 1-3 stand rejected under 35 U.S.C. §102(e) as being anticipated by Oliver et al. (U.S. Patent Application Publication No. 1005/0190157). Reconsideration of the Examiner's rejection is respectfully requested.

Applicants' claim 1, as amended herein, recites the following:

An optical device comprising:

a first light source that emits first light onto a surface;

a first detector that receives light reflected from said surface, wherein reflected light produces a first speckle pattern at said first detector with said optical device and said surface separated by a first distance;

wherein reflected light produces a second speckle pattern at said first detector with said optical device and said surface separated by a second distance; and

wherein said first light is adjusted from a first wavelength at said first distance to a second wavelength at said second distance so that a quantifiable attribute associated with said first speckle pattern and a quantifiable attribute associated with said second speckle pattern are approximately equal, wherein the ratio of said first and second wavelengths is used to measure distance between said optical device and said surface.

Claim 1 has been amended herein to incorporate the subject matter of dependent claim 4 and intervening dependent claim 2. Since claim 4 is not included in the present rejection under 35 U.S.C. §102(e), this amendment is believed to overcome the present rejection of claim 1.

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Claims 2-4 have been canceled herein. Claim 5 has been amended to depend from claim 1 rather than from canceled claim 2.

II. Rejection of Claims 4-27 Under 35 U.S.C. §103(a)

Claims 4-27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Oliver et al. (U.S. Patent Application Publication No. 1005/0190157) in view of Theytaz et al. (U.S. Patent Application Publication No. 2005/0231482). Reconsideration of the Examiner's rejection is respectfully requested.

Applicants respectfully point out that Theytaz et al. is not prior art relative to the present application. Accordingly, the rejection over Oliver et al. in view of Theytaz et al. is improper and should be withdrawn.

As discussed above in Paragraph I of this response, claim 1 has been amended herein to incorporate the subject matter of dependent claim 4 (along with the subject matter of intervening dependent claim 2). Since the rejection of claim 4 is improper, this amendment places claim 1 in condition for allowance. Claim 4 has been canceled herein.

Claims 6 and 7 have also been canceled herein to provide consistency with the amendment to claim 1 discussed above. Claims 5 and 8-27 are in condition for allowance due to the improper rejection over Oliver et al. in view of Theytaz et al., as discussed above.

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For at least the foregoing reasons, applicants respectfully assert that all of the pending claims are in condition for allowance.

Respectfully submitted,
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